IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 15

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, by SIDNEY GOTTLIEB, Escheator, Appellee

Appeal From the Supreme Court of Pennsylvania

BRIEF FOR APPELLANT

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CONSTITUTION AND STATUTES

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OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is reported at 400 Pa. 337, 162 A. 2d 617. The opinions of the Court of Common Pleas of Dauphin County are reported at 73 Dauphin County Reports 160 and 74 Dauphin County Reports 49.

JURISDICTION

The final decree of the Supreme Court of Pennsylvania was entered on June 29, 1960 (R. 88). Notice of appeal was filed in that court on September 27, 1960 (R. 97). Probable jurisdiction was noted by this Court on January 23, 1961 (R. 102). Jurisdiction of this appeal rests on 28 U.S.C. § 1257(2), since there is drawn in ques-

tion the validity of a Pennsylvania statute under the due process clause of the Fourteenth Amendment to the Constitution of the United States and the decision below was in favor of its validity.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The pertinent provisions of the Pennsylvania Escheat Act of May 2, 1889, P. L. 66, as amended by the Act of July 29, 1953, P. L. 986 (27 Purdon's Statutes §§ 43, 111, 333) are set forth in Appendix A hereto.

QUESTIONS PRESENTED

This case involves the right of Pennsylvania under provisions of its escheat statute to take money which a New York corporation received in connection with telegraphic money order transactions and sent to New York more than seven years before such provisions of the Pennsylvania statute were enacted. In connection with most of the transactions involved, negotiable drafts had been issued in states other than Pennsylvania, payable at banks outside Pennsylvania. The notice was by publication only, naming no claimants, and referring only to money, not to negotiable drafts.

In detail, the questions presented are as follows:

1. Is the Pennsylvania Act of May 2, 1889, P. L. 66, as amended (27 Purdon's Statutes §§ 43, 111, 333) re-

pugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

a. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and delivered by a New York corporation outside Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

b. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

c. unclaimed amounts owed to persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Is the Pennsylvania statute thus repugnant to the Fourteenth Amendment in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania,

naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

3. Is the Pennsylvania statute thus repugnant to the Fourteenth Amendment in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other states or third persons, of claims to these amounts based upon negotiable drafts and other choses in action?

STATEMENT

This case arose on a petition for escheat filed in the Court of Common Pleas of Dauphin County, Pennsylvania. From a judgment of escheat entered in that court (R. 56-57) appeal was taken to the Supreme Court of Pennsylvania. The present appeal follows from the affirmance by the Supreme Court of Pennsylvania of the decree of the lower court.

Prior to July 29, 1953, there was no Pennsylvania statute under which the Commonwealth of Pennsylvania could have claimed the right to escheat the amounts involved in these proceedings. On that date, the Pennsylvania Escheat Act of May 2, 1889, P. L. 66, which applied only to the escheat of property held by fiduciaries and to estates of intestates without known heirs or kindred, was amended to bring within its scope other persons and "every . . . form of personal property, tangible or intangible, and all interests therein, whether legal or equitable." Act of July 29, 1953, P. L. 986, §§ 1, 5 (27 Purdon's Statutes § § 333, 111). The Commonwealth of Pennsylvania

on December 21, 1953 (within five months after the amendment of the statute), began this proceeding against appellant.

The Common Pleas Court directed (R. 11-13) the posting and publication of a notice which was posted in the office of its prothonotary and published once in newspapers of general circulation in Dauphin County, Philadelphia and Pittsburgh, Pennsylvania. The notice was addressed to "all persons whatsoever claiming an interest in the personal property herein referred to" (R. 12), referred to the petition for escheat on file, and added (R. 12):

> "The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.
>
> "The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders . . ."

The petition (R. 1-3) sought the escheat of moneys received by the appellant in Pennsylvania in conducting its money order service and remaining unclaimed for more than seven years. The appellant, a corporation organized and existing under the laws of New York, with its principal place of business at 60 Hudson Street, New York City, is authorized to do business in Pennsylvania and the other states of the continental United States, the

District of Columbia and foreign countries and as a part of its business, carries on in these jurisdictions a telegraphic money order service (R. 13). It was subject to regulations of the Interstate Commerce Commission from 1916 to 1934 and has from 1934 to the present been regulated by the Federal Communications Commission and similar public service regulatory bodies in the District of Columbia and in the several states (R. 14). Its books of rules governing money order service have been filed since 1938 as its tariffs with the federal and state regulatory bodies (R. 14-15).

The procedure observed in the handling of the money order transactions where payees were located within 72 hours was as follows (R. 17): The sender filled out a money order application form at the telegraph company's office of origin in Pennsylvania, paid the principal and tolls and got a receipt for the money. A telegraph message was then transmitted to appellant's office located nearest to the designated payee, directing that office to pay the principal amount of the money order to the payee in the form of a negotiable money order draft. Upon receipt of the message the office of destination prepared the money order draft and a notice to the payee. The payee, after being notified and appearing at the office, was given this draft. The payee then either endorsed the draft, handed it back and received cash in the amount specified, or if he preferred he took the draft with him to make such use thereof as he saw fit, in which event he was required to sign a receipt for the draft.

Where, as in many instances involved in the case at bar, no draft or payment was delivered to the payee, the procedure was as follows (R. 17-18): If the payee could not be located or if after being notified he failed to call

for the draft within 72 hours, the office of destination transmitted a message to the office of origin advising the latter of the reasons for nonpayment. The office of origin then notified the sender to call at the office, where he received by way of refund a draft which he either endorsed and cashed immediately at the office or, if he preferred, carried away with him.

The moneys when received from senders were intermingled with other funds of appellant and were used to meet various operating requirements; any excess of such funds above operating needs was transferred to appellant's account at one of its thirteen fiscal and sub-fiscal agencies, none of which was located within Pennsylvania; and all money order drafts were drawn on one of these thirteen agencies outside Pennsylvania (R. 18-19, 20, 21, 23). Funds not used for local operating needs were eventually remitted to the appellant's Treasurer in New York (R. 25-26). By corporate practice before 1943, and under specific regulations of the Federal Communications Commission since then, funds representing the amounts of money order transactions not claimed within two years have been treated on appellant's books as income (R. 25-26).

Appellant in the vast majority of its money order transactions delivered drafts to the designated payee or to the sender if the payee could not be found (R. 29-30). The money order transactions here involved thus fall into one of two classes, namely, a vast majority as to which drafts have been issued and a small number as to which no drafts have been issued.

The judgment of escheat entered against the appellant is in the sum of $39,857.74 (R. 57). This amount

was arrived at by adding together $6,755.49 of unpaid intrastate orders and $33,853.82 of unpaid interstate money orders, originating in Pennsylvania but destined elsewhere, and by substracting therefrom $725.85 of items already paid to the State of New York under its Abandoned Property Law and $25.72 paid subsequent to the institution of suit to payees of intrastate orders (R. 57, 55, 54, 31).

SUMMARY OF ARGUMENT

I.

The Pennsylvania escheat statute as here applied is repugnant to the due process clause of the Fourteenth Amendment because Pennsylvania has no contact with the funds. Payments were made for money orders at the appellant's offices in Pennsylvania not to create obligations at those offices but to create obligations to pay elsewhere. In almost every money order transaction the obligation was transformed into an obligation to pay a draft at a bank outside Pennsylvania. The drafts, under tariff regulations and also under Pennsylvania law, became the primary evidence of the obligations. Long before the Pennsylvania act was passed the funds to fulfill all of the unsatisfied obligations had passed into the appellant's treasury in New York and [redacted] The fact that someone not [redacted] more than a transient from out-of-state paid money for transmission from a Western Union office in Pennsylvania does not alone give Pennsylvania such a contact as to justify escheat. Other states have more significant contacts. Under prior decisions of this

Court a known domiciliary contact has been the basis for jurisdiction to escheat. Here the State of New York alone has a proven domiciliary contact.

II.

The purported notice given pursuant to the Pennsylvania escheat statute did not satisfy due process requirements. Hence the appellant is entitled to raise the question of protection for itself against multiple liability. No property in Pennsylvania was brought under the control of the courts below. The escheat petition and the notice referred only to "moneys" or "amounts . . . refundable to the senders"; thus no effective notice was given to sendees or to holders of negotiable drafts. The published notice listed no names or addresses. Though last known addresses were of record, no mail notice was given; cf. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306.

III.

Only one state can escheat a fund. This Court should forestall the danger that recovery may be allowed in more than one suit while in point of fact or law only one party is entitled to succeed: cf. *Texas v. Florida,* 306 U.S. 398, 407. Full faith and credit is accorded solely to the escheat decree of the one state entitled to take. Because Pennsylvania is not that state the application of its escheat act here is repugnant to the Fourteenth Amendment.

The Pennsylvania act does not protect the appellant against multiple liability. Other states with better claims will seek to take the same amounts. Some have

already laid claim to the funds involved. Others have recently enacted statutes under which they can be expected to make claims and sustain them in their own courts. Individual claimants may also subject the appellant to multiple liability. The Pennsylvania decree cannot give the appellant the protection against multiple escheat which would be afforded by a decree of its domiciliary state.

Even a strong declaration by this Court that the Pennsylvana decree is entitled to full faith and credit would not be of any practical protection to the appellant. The interests not only of appellant but also of claimant states and individuals can be properly protected only by a definite rule which either confines the right to escheat to a single state, such as the domiciliary state, or insures the recognition of superior claims through a custodial or similar procedure.

ARGUMENT

I.

Pennsylvania's Contact with the Money Order Transactions Is Not Such as to Justify Escheat.

The Western Union Telegraph Company, appellant here, is authorized to do business in all the states of the continental United States (R. 13) and is therefore subject to the jurisdiction of the courts of every such state. If its mere doing of business in a state were enough to sustain escheat by that state of unclaimed funds in the appellant's hands, the resulting race of diligence by fifty sovereignties to seize such funds would be anarchic, not merely undignified. Obviously some special contact or contacts are required before a state can have a right to escheat. Pennsylvania has no such contact here, and its escheat act, therefore, is in the instant application repugnant to the due process requirements of the Fourteenth Amendment.

Mr. Justice Musmanno's opinion for the court below posits Pennsylvania's asserted escheat power upon the appellant's transaction of business and subjection to personal service there, and upon the conclusion that "all the transactions which are the bases of [its] outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania" (R. 93, 400 Pa. 337, 343, 162 A. 2d 617, 621). Were this a savings bank case, like *Security Savings Bank v. California,* 263 U.S. 282, or *Anderson National Bank v. Luckett,* 321 U.S. 233, such a "deposit" analysis might be valid. But the payments here were not made to create obligations at the

offices of deposit in Pennsylvania. Their whole object was to create an obligation to pay elsewhere. In almost every case where cash payment was not ultimately accomplished, the obligation was transformed into an obligation to pay at a bank outside Pennsylvania. The funds to fulfill every unsatisfied obligation were transferred to the appellant's treasury in New York. In the instances involved in the present action, brought within five months after enactment of the Pennsylvania statute providing for escheat of these funds, they had actually been transferred out of Pennsylvania long before the statute was passed.

We submit that if any state has the power to escheat the moneys here involved, it is New York, the state of domicile of the only party to the transactions involved whose domicile is in evidence. The appellant's domiciliary state, although not a party to this proceeding, is claiming under its Abandoned Property Law (McKinney's Consolidated Laws of New York, Abandoned Property Law, §§ 1309 *et seq.*) a portion of the moneys affected by the decree below, and may claim all of them (R. 28-29).

In none of the transactions involved in this case were any money order drafts drawn on a bank or other fiscal agency located in Pennsylvania (R. 19). All drafts were drawn on New York or other banks located outside Pennsylvania (R. 18-19). The moneys received by the appellant in Pennsylvania were commingled with other funds and sent out of Pennsylvania (R. 20, 21, 23), eventually coming to rest in the hands of appellant's Treasurer in New York (R. 25-26). While the appellant maintains in Pennsylvania sufficient funds to meet daily

operating needs, the assets which back up its obligations under the negotiable drafts in this case and its obligations to repay senders in the rare cases where drafts were not issued, are located in New York (R. 26). By corporate practice before 1943 and under specific regulations of the Federal Communications Commission since that date, funds received by the appellant as principal on money order transactions have been, when no claim was made for them within two years after receipt, taken in on the books as current income (R. 25-26). All of the moneys involved in this case had, therefore, before suit was instituted and even before the Pennsylvania statute was passed, left Pennsylvania, gone to New York, metamorphosed into income and thus entered into the surplus and rate structure of this regulated utility. If these funds have any situs in or contact with any state, it is New York, the state of the appellant's domicile.

To overcome the fact that almost all of the funds originally received in Pennsylvania had been transformed into negotiable drafts on New York and other banks, the Pennsylvania Supreme Court asserted that these drafts "could not be regarded payment since there was no contract to that effect between the parties" (R. 96, 400 Pa. 337, 346, 162 A. 2d 617, 622). This conclusion is directly contradicted by the record.

The stipulation of facts (R. 17-18) clearly states that the amount of the money order was refundable only if the payee could not be located or if, although located and notified, the payee failed to pick up the draft within seventy-two hours. No refund was to be made to the sender if a draft had been issued to the payee.

Argument: Inadequate Contact.

That the appellant, as debtor, and the sender or payee, as creditor, contracted that the delivery of a negotiable draft constituted payment, is established by the provisions of the money order tariff regulations under which Western Union operates. These tariffs (R. 61-64) have uniformly provided that all payments are to be made by draft. The tariffs are required to be filed with the federal and state regulatory bodies (R. 14-15), are an essential and integral part of the contract, and are binding upon and fix the rules and obligations not only of Western Union but also of the senders and payees: *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 566; *Western Union Telegraph Co. v. Priester*, 276 U.S. 252. Upon delivery of a draft to the payee, the telegraph company's contract obligation to the sender is therefore fully performed. Under tariff regulations and as a purely practical matter, the appellant cannot thereafter pay money order funds to anyone except the holder of the draft.

The appellant's tariff regulations have at all times been consistent with Pennsylvania law as to the effect of delivery of a negotiable draft for a pre-existing indebtedness. The acceptance of a check, note or draft is, under Pennsylvania law, an absolute discharge of the original obligation only where there is a special agreement to this effect, but the tariff regulations constitute such an agreement. Even without such regulations, however, the issuance of a Western Union draft to a payee or to a sender would, at the very least, make the draft the primary evidence of the obligation. Though in the absence of a special agreement payment by delivery of a draft is only conditional payment, such payment is nonetheless payment, defeasible only on the dishonor or non-

payment of the draft. Only in the event of dishonor or nonpayment of the draft can the creditor sue the debtor on the underlying debt. Such has been the rule in Pennsylvania for a great many years: *Holmes v. Briggs*, 131 Pa. 233, 240, 18 Atl. 928, 929 (1890); *S. A. Gerrard Co. v. Tradesmen's National Bank & Trust Co.*, 318 Pa. 100, 103, 177 Atl. 760, 761 (1935); *Gehringer v. Real Estate-Land Title and Trust Co.*, 321 Pa. 401, 404, 184 Atl. 100, 102-103 (1936); *Wendkos v. Scranton Life Ins. Co.*, 340 Pa. 550, 553, 17 A. 2d 895, 897 (1941). The Pennsylvania Uniform Commercial Code, Act of April 6, 1953, P.L. 3, § 3-802, as amended (12A Purdon's Statutes § 3-802), was not in effect at the time of the money order transactions involved in this case; yet it is interesting to note that it does not effect any basic change in the Pennsylvania law: it provides that "where an instrument is taken for an underlying obligation . . . the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment."

So long as a negotiable draft is outstanding, a claim for refund against Western Union could be properly made only by presentment of the draft or otherwise by accounting satisfactorily for it. Western Union has never in its history made a refund payment to a sender where a negotiable draft has been issued to the designated payee (R. 27) and, until the opinion of the court below was filed, no court or regulatory commission had ever suggested that it might be obligated to do so. Any such obligation would completely disrupt the appellant's nationwide money order service and expose it to liability to senders, running into millions of dollars annually, in instances where negotiable drafts issued to payees had not yet been presented for payment.

Argument: Inadequate Contact.

As a matter of law and as a matter of practice under the official tariffs, Western Union's drafts, immediately upon their issuance and delivery, become the essential evidence of its obligation to pay. The obligation in each case travels with the negotiable draft.

Both under general rules of law and under the applicable tariff regulations, it is clear that Pennsylvania ceased to have any real connection with the money order transactions here involved before either its legislature or its escheator attempted to seize the moneys transmitted. The mere fact that someone who may or may not be a resident of Pennsylvania now, who may or may not have been a resident of Pennsylvania at the time of the transaction, who may in fact have merely been passing through Pennsylvania or staying for a few days in temporary lodgings in Pennsylvania, paid in money for transmission at a Western Union office in Pennsylvania does not give that state any significant contact with or dominion over that money. In cases where the intended payee received a draft outside Pennsylvania, the appellant's obligation moved out of the state with all the speed of electricity. Where the payee or the sender received a negotiable draft within Pennsylvania, the appellant's obligation moved instantaneously to the place of payment of the draft, which in every case was outside Pennsylvania. Even in the rare cases where no draft was issued and where the appellant's obligation to repay the sender was therefore not negotiable, there is nothing in the record to show that that obligation has any situs for escheat in Pennsylvania, since the residence of the sender is not known and the actual money involved has long since found its way to New York. Pennsylvania's contact with all of these transactions was indeed

ephemeral. It cannot be compared to the contacts of a state where the funds involved are held or are demandable under the terms of the negotiable instrument. It cannot begin to be compared with the contacts of a state where the debtor is domiciled and where the moneys involved have been received and taken into income.

A holding that Pennsylvania does not have jurisdiction to cause the escheat of the funds involved in this case is, we submit, required by the principles with regard to escheat jurisdiction over corporate property to which this Court has consistently adhered. In *Standard Oil Co. v. New Jersey*, 341 U.S. 428, *Anderson National Bank v. Luckett*, 321 U.S. 233, and *Security Savings Bank v. California*, 263 U.S. 282, it was decided that the state of corporate domicile or the state where a bank is located has the power to escheat property held by the corporation or bank, even though claimants of the property might or might not be residents of the state. In *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, this court decided only that a state could escheat funds of foreign corporations in instances where the possible claimants were at the time of escheat residents of that state. In *United States v. Klein*, 303 U.S. 276, funds actually on deposit in a court were held to be escheatable by the state in which the court was located; in effect, this was a recognition of a domiciliary situs.

In every case the determination of escheat jurisdiction has depended upon a known domiciliary fact. In the case at bar the only domiciliary fact is that appellant's domicile is in the State of New York. The domiciles of senders, payees and other possible claimants are not known. Under this Court's decisions, therefore, New

York is the only state which can take by escheat the funds which Pennsylvania is now claiming.

Not only do the decisions of this Court sustain this conclusion, but there are also other urgent and compelling reasons why a domiciliary state alone should have escheat jurisdiction. The increasing number of state statutes which seek to escheat every conceivable type of unclaimed assets demands a workable, definite and practical rule. The alternative is interstate squabbles, races to different courthouses, and multiple escheats. Where, as in the case at bar, the domicile of the last known owner cannot, as a practical matter, be discovered, the only practical rule for determining the existence of escheat jurisdiction is to fix the situs at the domicile of the corporation proceeded against. Since Pennsylvania is not shown to be the state of domicile of either the senders or the payees in any money order transactions, nor the state of domicile of the appellant Telegraph Company, but merely the place where someone first paid money which has since moved out of the jurisdiction, Pennsylvania should be held not to have power to escheat.

II.

The Notice Purportedly Given Did Not Satisfy the Requirements of Due Process.

Notice other than by personal service in a case such at that at bar can be justified only when there has been seizure or attachment of a *res*. Even then due process requires that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Here there was no seizure or attachment of a *res*, no mention in the published form of notice of

the names of any claimants, no attempt to give notice by mail to possible claimants whose last known addresses were available, and not even any reasonably clear description of property thereafter included in the escheat decree. For these reasons the proceedings violated the due process requirements of the Fourteenth Amendment.

As we shall explain in the last section of this brief, the inadequacy of the notice precedure in several respects exposes the appellant telegraph company to the risk of double escheat or double payment. If this escheat statute effectively relieved appellant of its liability to others, it could not complain of the inadequacy of notice here. "But if the statute is deficient in its provisions for notice and opportunity for hearing so that [claimants] would not be bound by any proceedings taken under it, the [appellant] would be entitled to raise the question whether its obligation to [claimants] would be discharged by payment of the deposits to the state. Hence our inquiry must be directed to the question whether the procedure by which the state undertakes to acquire the [claimants'] right to demand payment of the deposits was upon adequate notice to them and opportunity for them to be heard": cf. *Anderson National Bank v. Luckett*, 321 U.S. 233, 242-243.

In proceedings to escheat personalty, seizure of a *res* by the escheator, whether the *res* be tangible or intangible, is a fundamental prerequisite for the giving of notice by publication. Substituted service in lieu of personal service is "permissible only where '*property in the State* is brought under the control of the court, and subjected to its disposition by process adapted to that purpose:' " *Hanson v. Denckla*, 357 U.S. 235, 250; *Pennoyer v. Neff*, 95 U.S. 714, 727-728, 733; *Hollingsworth v. Bar-*

bour, 4 Pet. 466, 475; *Scott v. McNeal,* 154 U.S. 34, 46; *Hamilton v. Brown,* 161 U.S. 256, 274. This is borne out by *Security Savings Bank v. California,* 263 U.S. 282, where the State of California sought to escheat deposits in a bank which was a California corporation and had its only place of business there. The petition for escheat was directed against the deposits that were actually in the bank in its place of business in California. Since there was a seizure of the deposits, publication by notice was held good as to the depositors, the court stating (p. 287):

> "[T]he essentials of jurisdiction over the deposits are that there be seizure of the *res at the commencement of the suit;* and reasonable notice and opportunity to be heard." (Italics supplied.)

Likewise, in *Anderson National Bank v. Luckett,* 321 U.S. 233, 245, the state at the commencement of the proceedings seized bank deposits in a bank within the state, and the posting of notice to depositors upon the door of the courthouse in the county in which the bank was located was held to be adequate notice on the ground that: "the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property."

In the case at bar the petition for escheat (R. 1-3) nowhere referred to the property to be escheated other than as "moneys received by the defendant". The notice published once in three newspapers and posted in the prothonotary's office defined the property to be escheated as "amounts held and owing by The Western Union Telegraph Company . . . arising from the receipt by it of various sums from divers persons for transmit-

tal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees" (R. 12). Neither the escheat petition nor the escheat notice referred to anything having a situs in Pennsylvania.

To overcome the difficulty created by the insufficiency of the escheat petition and escheat notice, the opinion of the Pennsylvania Supreme Court said that the state was asking only "for the fiscal equivalent of that money" (R. 91, 400 Pa. 337, 341, 162 A. 2d 617, 619). In effect the court below said that the petition and notice referred not to money in the specific sense, but rather to obligations to pay money, which obligations in this case were in almost every instance evidenced by negotiable instruments. The Pennsylvania Escheat Act of July 29, 1953, P. L. 986, § 5(a), (27 Purdon's Statutes § 111(a)), defines "property" as used in that statute to include not only "moneys" but also "negotiable instruments, . . . instruments of indebtedness not under seal, . . . choses in action, claims, debts, demands, . . . and every other form of personal property tangible or intangible, and all interests therein, whether legal or equitable". When Pennsylvania, despite its broad statute, purports to seize only "moneys," it would be difficult for the appellant to persuade a court in another state that obligations to pay, evidenced by negotiable drafts, had been taken by Pennsylvania and could not be seized a second time. And even if the word "moneys" could be so broadly extended, not one of the negotiable drafts was payable in Pennsylvania or supported by funds on deposit in Pennsylvania. There was nothing to be seized in Pennsylvania. No *res* was seized or attached in this case and therefore notice by publication was ineffective.

Argument: Inadequate Notice.

Even if notice other than by personal service could have been justified in this case, the published notice was completely inadequate to alert anyone, even the rare person who reads such things, to the fact that what was to be escheated was, for the most part, obligations evidenced by negotiable drafts. The notice (R. 12) as quoted above defined the property to be escheated as "amounts held and owing by The Western Union Telegraph Company . . . and refundable to the senders because the defendant could not effect payment to the sendees . . ." This language does not cover the holder of a negotiable draft, particularly if, as in the great majority of the cases, he had not been the sender in the money order transaction involved. Even if such a holder chanced to read the fine print in a Philadelphia, Pittsburgh or Harrisburg newspaper, or chanced to be in the office of the Dauphin County prothonotary and had the curiosity to read the notice on the bulletin board, he would not be apprised that this notice had anything to do with him. After all, he would have his draft. This was his payment. Why then should he believe that the Pennsylvania courts would escheat his rights under that draft as something "refundable to the senders"? The form of notice would not notify him of anything. Rather it would deceive him.

A published notice which is intended to notify rather than deceive, to be effective rather than a mere sham, should at the least give the names of the last known claimants to funds about to be escheated. When the individual sums are very small, the necessity for printing such names in a newspaper could, of course, be dispensed with where the cost of publication is disproportionate to the amount involved. For every sizable amount, however, names should be printed. The dollar

amount at which the line should be drawn may vary according to the expense of publication in the jurisdiction, but the acts of various states summarized in Appendix B at the end of this brief show that any amount over $25 or thereabouts deserves the publication of the last known owner's name, and perhaps his address as well. Even Pennsylvania, in other types of escheat proceedings, requires mail notice, regardless of the amount involved, and publication of names and addresses for items of $10 or over in some cases, Act of June 7, 1915, P. L. 878, § 6, as amended (27 Purdon's Statutes § 281), Act of June 25, 1937, P.L. 2063, § 5 (27 Purdon's Statutes § 438), and for items of $50 or over in another, Act of May 11, 1949, P. L. 1140, § 5 (27 Purdon's Statutes § 465). This widespread practice of requiring the printing of names reflects common ideas of fairness and due process, which were ignored in the case at bar.

Even where the expense of publication of a possible claimant's name is too great, the three-cent expenditure for a post card notice is certainly not too great. Pennsylvania has recognized this in other types of escheat proceedings: see the statutes cited in the paragraph next above. The list of unpaid money order claimants which was available in the case at bar (an example of which is printed at R. 59-60) contained the addresses, as well as the names, of most of the possible claimants. In all fairness to these persons, though their claims might be for as little as $1.00 in some instances, they should have been sent at least a personal notice by a three-cent post card. At least some of these notices would have reached interested parties by forwarding or otherwise. Some of the payees of drafts, as can be seen from an inspection

of the names and addresses of payees at R. 59-60, would clearly be found at their original addresses.

"Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.

* * * * * * *

"The statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand. However it may have been in former times, the mails today are recognized as an efficient and inexpensive means of communication.

* * * * * * *

"In some situations the law requires greater precautions in its proceedings than the business world accepts for its own purposes. In few, if any, will it be satisfied with less. Certainly it is instructive, in determining the reasonableness of the impersonal broadcast notification here used, to ask whether it would satisfy a prudent man of business, counting his pennies but finding it in his interest to convey information to many persons whose names and addresses are in his files. We are not satisfied that it would. Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual beneficiary

> does or could examine all that is published to see if something may be tucked away in it that affects his property interests. We have before indicated in reference to notice by publication that, 'Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.' "

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318, 319-320. See also *Walker v. Hutchinson*, 352 U.S. 112, 116.

The rules of fair play and due process were disregarded in the Pennsylvania escheat proceedings here. The Pennsylvania procedure for escheat is a greedy one, granting claimants neither the right to a three-cent postcard notice nor even the right to a reasonably specific notice by publication. The proceeding seems almost designed to deceive, rather than to inform, the real owner of the property to be escheated. In the case at bar it was not even based upon the seizure or attachment of any *res*. That the Pennsylvania statute as applied here does not allow adequate notice to possible claimants is perhaps but a result of a more basic defect, which is Pennsylvania's lack of adequate contacts on which to ground "situs" jurisdiction: cf. *State of New Jersey v. Western Union Telegraph Co.*, 17 N.J. 149, 158-161, 110 A.2d 115, 119-121 (1954). Either of these inadequacies is enough to render the Pennsylvania act repugnant to the Fourteenth Amendment.

III.

The Pennsylvania Decree Does Not Protect the Appellant Against Future Claims.

The Pennsylvania Escheat Act involved in this case is not a mere custodial statute. It takes for Pennsylvania the escheated fund, and all of it. If other states or individual claimants sue for the fund involved in the same money order transactions, the appellant will have to pay again unless Pennsylvania alone was entitled to take the sums involved. The appellant would not be protected by the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, if Pennsylvania did not have sole jurisdiction to escheat. The resulting subjection of the appellant to multiple liability renders Pennsylvania's statute unconstitutional under the due process provisions of the Fourteenth Amendment.

The principal amounts of the money orders, which Pennsylvania seeks to escheat, may be claimed by other states on the ground that these states are or at one time were the location of the payees of the money orders, or of the drafts given in payment of the money orders, or of the banks on which these drafts were drawn. New York can press a potent claim as appellant's chartering state and as the state where the funds were ultimately taken into appellant's treasury and accounted for as current income. If the claim of more than one of these states were upheld, to the extent of the escheats in excess of the total amount involved the appellant would be deprived of its property without due process of law. The case is not like the double-taxation cases, where less

than the whole is taken. This Court should forestall the danger that recovery may be allowed in more than one suit "while in point of fact or law only one party is entitled to succeed": cf. *Texas v. Florida,* 306 U.S. 398, 407. It should protect the appellant and all claimants "from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject": *ibid.*

Because Pennsylvania's contact with these money order transactions is so ephemeral, it is not unrealistic to visualize future claims pressed by other states whose contacts with the money order drafts, the payees of the drafts, or the banks on which drafts were drawn are much more impressive than those of Pennsylvania. We do not think it necessary to suggest that the claims of these other states might be motivated by something other than solicitude for the interests of the true owners of the property: cf. dissenting opinion of Jackson, J., in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541, at p. 563. Suffice it to say that it would be impractical not to assume that other revenue-eager states will seek to take for their own exchequers the appellant's obligations arising out of money order transactions: cf. dissenting opinion of Frankfurter, J., *ibid.*, at pp. 552, 554-555.

Some states have already laid claim to the funds here in question. A claim for similar moneys has been presented to the appellant by Massachusetts under its Abandoned Property Law, Massachusetts General Laws, Chap. 200A (R. 28). New York has taken by escheat some of the funds claimed by Pennsylvania (R. 47), and additional amounts have been reported under the New York Abandoned Property Law but have not yet been actually escheated (R. 57). The lower court here made

no allowance for the latter items, although it did permit deduction of $725.85 actually paid to New York. Even as to this sum the court stated: "We do not recognize New York's authority to escheat that money" (R. 47).

Attempts by states to escheat are not easily discouraged. The ruling favorable to the appellant in *State of New Jersey v. Western Union Telegraph Company*, 17 N.J. 149, 110 A. 2d 115 (1954), may not put to rest the claims of New Jersey. Despite the strong warnings as to constitutional limitations in the opinion in that case, the court based its decision on grounds which have been removed by the enactment of an alternative escheat procedure (N. J. Rev. Stat., Title 2A, §§ 37-29 *et seq.*), which would apply to any funds unclaimed for five years and not barred by the six-year statute of limitations. See *State of New Jersey v. Sperry & Hutchinson Co.*, 23 N.J. 38, 127 A. 2d 169 (1956).

In recent years many other states have enacted unclaimed or abandoned property escheat statutes. These statutes are tabulated in Appendix B at the end of this brief. It can be expected that legislatures in other states will continue the trend and that eventually most, if not all, of the states will have similar statutes. All of the state statutes so far enacted are broadly drawn and might conceivably be used to claim some of the amounts involved in the case at bar. If a state with as flimsy a claim as Pennsylvania's could escheat these amounts, it could be expected that many other states would go after the same easy revenue.

Having decided to escheat, these claimant states can assert several explanations of why the prior Penn-

R.S. 2:55-1 as amended				
New Mexico Stats. Ann. § 22-22-1 Laws 1959, c. 132 § 1	Yes			
New York Abandoned Property Law § 1309 Added L. 1949 c. 824 as amended	Yes(5)	No	No	No
North Carolina Gen. Stats. § 116-23 1957, c. 1049	Yes	No	No	No
Oklahoma Stats. Ann., Tit. 84 § 271 R.L. 1910 § 8436 as amended	Yes	Yes(names only)	No (1)	No
Oregon R.S. § 98.302 1957 c. 670 § 3	Yes	Yes(6)	Yes(6)	No
Texas 9 A Vernon's Civil Stat. § 3272 Acts 1855, p. 35 G.L., as amended	Yes	Yes(names only)	No (1)	No
Utah Code Ann. 78-44-1 1957 c. 6 § 1	Yes	Yes(2)	Yes(2)	No
Virginia Code § 55-210.1 1960 c. 330	Yes	Yes(2)	Yes(2)	No
Washington Rev. Code § 63.28.010 1955 c. 385 § 1	Yes	Yes(2)	Yes(2)	No

(1.) Service of summons required if within jurisdiction.

(2.) Only on items of $25 or more.

(3.) Only applies to bank accounts in excess of $5.

(4.) Only applies to unclaimed insurance funds in excess of $50.

(5.) Yearly in state bulletin.

(6.) Only on items of $50 or more.

sylvania escheat does not bind them. Since the property involved here was not located in Pennsylvania, as shown in the first part of this brief, those states may justifiably contend that Pennsylvania had no jurisdiction to escheat, and will disregard the Pennsylvania decree. In addition, they can contend that Pennsylvania did not escheat the negotiable drafts which the claimant states assert the right to take. The petition, notice and decree in Pennsylvania refer only to "moneys" and do not purport to escheat, cut off or determine claims, debts, or demands of holders of negotiable instruments located in other states or reserves which have been taken into income in the appellant's treasury in the chartering state of New York. The decree (R. 57) directs that a judgment of escheat be entered for an amount of money equivalent to that paid by senders of money orders. Furthermore, since the Pennsylvania statute refers not only to "moneys" but also to "negotiable instruments, . . . choses in action, claims, debts, demands", Act of July 29, 1953, P.L. 986 § 5(a) (27 Purdon's Statutes § 111(a)), courts of other states could refuse to "adopt a strained reading which renders one part" of the Pennsylvania Act "a mere redundancy", *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307-308, and assume that the Pennsylvania decree was not intended to escheat anything except money located in Pennsylvania.

An escheat decree like that of Pennsylvania cannot give the appellant the protection against duplicative claims which is afforded by the decree of a domiciliary state: cf. *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443; *Canada Southern R. Co. v. Gebhard*, 109 U.S. 527, 537-538. The recent popularity of abandoned property statutes and the growing desire of the states for easy

revenue demonstrate that the appellant's fear of multiple escheat is not unfounded.

The possibilities of multiple escheat do not exhaust the possibilities of multiple liability for the appellant in this situation. Individual claimants, particularly those who hold negotiable paper evidencing appellant's obligation to pay, might very well persuade the courts of their home states to honor their claims, despite a prior Pennsylvania decree of escheat. Such claimants, in addition to the assertions that Pennsylvania did not purport to escheat the negotiable instruments and that Pennsylvania had insufficient contacts with the transactions to permit escheat of anything, could also make the very appealing argument that the notice given by Pennsylvania was inadequate to bind them. Local courts, we submit, would be quick to appreciate the equities of such claimants.

Even a strong declaration by this Court that Pennsylvania's victory in the race to escheat would cut off future claims of other states and individuals would not be any practical protection to the appellant here. A series of nibbling attacks by other states and by individuals could subject the appellant to multiple liability in such a manner that the remedy of appeal to this Court would be economically and practically worthless. Encouraged by the success of Pennsylvania's search for escheat revenue, a swarm of other states could be expected to bring claims based on other aspects of the same money order transactions. Conceivably no one of these claims might involve a sum justifying the cost of an appeal, yet the total effect of paying off a host of small claims twice or three times or more, or of defending

those claims in courts of first instance, could be a major burden to the appellant.

It is not only for the appellant's sake that we press this plea for a realistic and practical disposition of Pennsylvania's claim in the case at bar. The unnecessary labor and expense to which the appellant might be subjected, if Pennsylvania were allowed to escheat these funds and others were thus encouraged to follow a similar course, would be at least matched by the burden placed on other courts and eventually on this Court. In addition, there is to be considered the labor and expense which would be involved for states other than Pennsylvania, and the possible prejudice to their superior rights. If this Court were to decide that a state with as tenuous a claim as Pennsylvania's had a right superior to, and could cut off, the rights of other states because of mere priority in time, then unnecessary and duplicative diligence in pressing escheat claims would burden all of the states collectively, while rewarding only the winner in the race to the courthouse. That winner would not necessarily be the state with the most equitable claim: the race would be to the swift, though the battle would not be to the strong.

If diligence in the race, or mere good fortune, were to be the sole determinant of the proper forum for disposition of unclaimed property, it should be recognized as such only provided other states, and other possible claimants, could have an opportunity to participate in the litigation. The Pennsylvania legislation does not furnish such an opportunity. Only a custodial statute or some other arrangement whereby adjustment of conflicting interests could be had would take care of such a situation: cf. *Texas v. Florida,* 306 U. S. 398, and dis-

senting opinions in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541, at 555-556, and *Standard Oil Co. v. New Jersey,* 341 U.S. 428, at 444-445, 445.

Fairness to the appellant and among claimant states and individuals demands a fixed, definite rule which either confines the right to escheat to a single state having clear contacts with the property (such as the domiciliary state) or else forbids any proceeding which does not insure opportunity for superior claims to be successfully asserted (as under a custodial statute). Approval of any other procedure, such as that prescribed by the Pennsylvania legislation, can result only in confusion, unseemly contention, and unfairness. For one in the appellant's position it could only result in a denial of due process of law through exposure to multiple liability and harassment.

CONCLUSION

The Pennsylvania escheat statute as here applied is repugnant to the due process clause of the Fourteenth Amendment because Pennsylvania has no such contact with the funds as to justify escheat and because the purported notice was inadequate. The decree made pursuant to the statute subjects the appellant, in contravention of due process, to multiple liability. The decree should be reversed.

Respectfully submitted,

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APPENDIX A

Pertinent Pennsylvania Statutes

Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333), subsections (b), (c) and (d):

"(b) Whensoever the owner, beneficial owner of, person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

Appendix A.

Act of May 2, 1889, P.L. 66, §8 (27 Purdon's Statutes §43), subsection (a):

"That whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction in the premises shall upon the filing of any account or statement by any administrator, executor, depository of the court, receiver or other officer of the court, or of any trustee or other person in a fiduciary capacity, of any property or estate, real or personal, escheated or supposed to be escheated, proceed to the audit and adjudication of said account or statement in the same manner as the said court commonly proceeds upon the audit and adjudication of the accounts of executors, administrators and trustees; and shall upon said audit, proceed to inquire and determine whether there has been any escheat or not, and if so, in what manner and for what cause said escheat has occurred, and also what estate, real or personal, has escheated, and what is the value thereof. And the said court shall, in all cases where any real estate has escheated or is alleged to have escheated, before proceeding finally to hear and determine the question of escheat, order and direct notice of said proceedings to be served upon the person or persons in possession of said real estate, in such form as the court shall direct, and the said court shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the

escheator and all parties claiming to have any interest in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

Act of July 29, 1953, P.L. 986, § 5 (27 Purdon's Statutes § 111), subsections (a) and (b):

"(a) The term 'real or personal property', as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

"(b) The term 'beneficial owner', as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property."

APPENDIX B

Abandoned Property Laws of States Other Than Pennsylvania

State	Publication Required	Publication Must Contain Names and Addresses	Mail Notice Required to Last Known Address	Public Posting Required
Alaska Compiled Laws § 57-8-8 L 1921, c. 40 § 8 as amended	Yes	Yes (names only)	No (1)	No
Arizona R.S. §44-353 Added Laws 1956, c. 126 § 1	Yes	Yes (2)	Yes (2)	No
Arkansas Statutes 1947 § 50-601 Acts 1949, No. 229 § 1	Yes	No	No	No
California CCP § 1500 Added Stats. 1959, c. 1809 § 2	Yes	Yes (2)	Yes (2)	No
Connecticut Gen. Stats. § 3-56 1949 R.S. § 148	Yes (3) (4)	Yes (3) (4)	Yes (3)	No
Idaho Code § 14-501 1961, c. 162 § 1	Yes	Yes (2)	Yes (2)	No
Kentucky R.S. § 393.090 1960 c. 142 § 8	Yes	Yes	No	Yes
Louisiana R.S. § 9:151 Acts 1958, No. 507 § 1	No	No	No	No
Massachusetts Ann. L. C. 200A § 1 1950, 801 § 1 as amended	Yes	Yes (2)	Yes (2)	No

Acts 1958, No. 507 § 1				
Massachusetts Ann. L. C. 200A § 1 1950, 801 § 1 as amended	Yes	Yes(2)	Yes(2)	No
Michigan Stats. Ann. §26.1053 Act 239, 1947, as amended	Yes	Yes(names only)	No	Yes
Montana Rev. Code 91-501 L. 1943, c. 181 § 1 as amended	No	No	No	No
New Jersey 2A N.J.S.A. § 37-1 R.S. 2:53-1 as amended	Yes	Yes	No	Yes
New Mexico Stats. Ann. § 22-22-1 Laws 1959, c. 132 § 1	Yes	Yes(2)	Yes(2)	No
New York Abandoned Property Law § 1309 Added L. 1949 c. 824 as amended	Yes(5)	No	No	No
North Carolina Gen. Stats. § 116-23 1957, c. 1049	Yes	No	No	No
Oklahoma Stats. Ann., Tit. 84 § 271 R.L. 1910 § 8436 as amended	Yes	Yes(names only)	No (1)	No
Oregon R.S. § 98.302 1957 c. 670 § 3	Yes	Yes(6)	Yes(6)	No
Texas 9 A Vernon's Civil Stat. § 3272 Acts 1855, p. 35 G.L., as amended	Yes	Yes(names only)	No (1)	No
Utah Code Ann. 78-44-1 1957 c. 6 § 1	Yes	Yes(2)	Yes(2)	No
Virginia Code § 55-210.1 1960 c. 320	Yes	Yes(2)	Yes(2)	No